

DECLARING THAT CERTAIN LANDS BE HELD IN TRUST
FOR THE QUINAULT INDIAN NATION, AND FOR OTHER
PURPOSES

SEPTEMBER 30 (legislative day, SEPTEMBER 26), 1988.—Ordered to be printed

Mr. INOUE, from the Select Committee on Indian Affairs,
submitted the following

REPORT

[To accompany S. 2752]

The Select Committee on Indian Affairs, to which was referred the bill (S. 2752) having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill (as amended) do pass.

The amendment is an amendment in the nature of a substitute and is as follows:

Strike out all after the enacting clause and insert the following:

"SECTION. 1. EXPANSION OF QUINAULT INDIAN RESERVATION.—The Quinault Indian Reservation is hereby expanded to include those lands consisting of more or less 11,905 acres and generally depicted on the map entitled, "North Boundary Expansion, Quinault Indian Nation," numbered 88-S2752-1 and dated, September 23, 1988, which shall be on file and available for public inspection in the offices of the Chief, Forest Service, and of the Assistant Secretary for Indian Affairs, Department of the Interior, and of the tribal offices of the Quinault Indian Nation.

"SEC. 2. QUINAULT SPECIAL MANAGEMENT AREA.—The Secretary of Agriculture shall—

(a) manage those Federal lands within the boundaries of the Olympic National Forest consisting of more or less 5,460 acres and generally depicted on the map entitled "Quinault Special Management Area" numbered 88-S2752-2 and dated, September 23, 1988, which shall be on file and available for public inspection in the offices of the Chief, Forest Service, and of the Assistant Secretary for Indian Affairs, Department of the Interior, and of the tribal offices of the Quinault Indian Nation in a manner consistent with Section 3; and

(b) shall distribute the proceeds from the sale of forest products on lands referred to in subsection (a) as provided in Section 4.

"SEC. 3. ADMINISTRATION OF LANDS.—(a) All right, title, and interest in lands owned by the United States and administered by the United States Forest Service and referred to in Section 1, shall hereafter—

(1) be administered by the Secretary of the Interior; and

(2) be held in trust by the United States for the Quinault Indian Nation and to be part of the Quinault Indian Reservation.

(b) All right, title, and interest in lands which are owned by the United States and administered by the United States Forest Service which are referred to in Section 2 shall remain in the United States and, except as provided in Section 4, shall continue to be administered by the United States Forest Service as other National Forest System lands are administered.

"SEC. 4. RECEIPTS FROM NATIONAL FOREST SYSTEM LANDS.—(a) Notwithstanding any other provision of law, the Secretary of Agriculture shall, without further appropriations, receive from the gross proceeds from the sale of forest products from lands referred to in Section 2 a reasonable fee not to exceed ten percent for preparation and administration of timber sales from such lands.

(b) Notwithstanding the requirements of the Act of March 4, 1907 (16 U.S.C. 499) concerning moneys received from revenues generated from the National Forests into the Treasury of the United States, moneys received from the lands referred to in Section 2 shall be distributed the following manner:

(1) Forty-five percent of all moneys received during any fiscal year from said land shall be paid into the account referred to in Section 8; and

(2) forty-five percent of all moneys received during any fiscal year from said lands shall be paid to the State of Washington pursuant to the Act of May 23, 1908 (C. 192, 35 Stat. 251 as amended; 16 U.S.C. 500).

"SEC. 5. LIMITATIONS ON TIMBER HARVEST.—(a) The Secretary of the Interior shall not approve any sale of unprocessed timber from lands referred to in Section 1 which will be exported from the United States, or which will be used as a substitute for timber from private lands which is exported by the purchaser: *Provided*, That this limitation shall not apply to specific quantities of grades and species of timber which the Secretary determines are surplus to domestic lumber and plywood manufacturing needs.

(b) In addition to restrictions referred to in subsection (a), the Secretary of the Interior shall—

(1) limit the sale of timber from the lands referred to in section 1 to a quantity equal to or less than a quantity which can be removed from such lands annually in perpetuity on a long term sustained-yield basis: *Provided*, That in order to meet overall multiple-use objectives, the Secretary may establish an allowable sale quantity for any decade which departs from the projected long-term average sale quantity that would otherwise be established. In addition, within any decade, the Secretary may sell a quantity in excess of the annual allowable sale quantity established pursuant to this section so long as the average sale quantity of timber over the decade covered does not exceed such quantity limitation; and

(2) administer all timber and forest products sold from the lands referred to in Section 1 in accordance with the conditions of the Policy Statement for the Grays Harbor Sustained Yield Unit as defined and administered by the Secretary of Agriculture as long as such policy statement remains in effect.

SEC. 6. EXISTING RIGHTS-OF-WAY AND OTHER INTERESTS.—The Secretary of Agriculture shall reserve permanent easements for the purpose of continuing access, including public access, to National System lands on Forest Service roads numbers 21, 2110, 2120, 2130, 2140, 2190, 2191, and all numbered extensions or segments thereof. Such easements shall be in a form acceptable to the Secretary of Agriculture, including provisions for cooperative maintenance.

SEC. 7. ACCESS TO LANDS.—(a) The Secretary of the Interior shall allow such additional rights-of-way through lands referred to in Section 1 as the Secretary of Agriculture, in consultation with the Secretary of the Interior and the Quinault Indian Nation, considers necessary to provide access to and management of National Forest System lands, including public access. Such rights-of-way shall be located in such manner as the Secretary of the Interior, in consultation with the Secretary of Agriculture and the Quinault Indian Nation, determines to be appropriate.

(b) The Secretary of Agriculture shall allow such rights-of-way through National Forest lands as the Secretary of the Interior, in consultation with the Secretary of Agriculture and the Quinault Indian Nation, considers necessary to provide access to lands referred to in Section 1. Such rights-of-way shall be located in such a manner as the Secretary of Agriculture, in consultation with the Secretary of the Interior and the Quinault Indian Nation determines to be appropriate.

SEC. 8. USE OF TIMBER SALE PROCEEDS.—The Secretary of the Interior shall maintain a segregated account and shall deposit in such account all funds derived from the sale of unprocessed timber from the lands referred to in Section 1. The Secretary shall make such funds available only for—

(a) costs incurred by the Quinault Indian Nation for the preparation and administration of timber sales, including road construction and maintenance on such lands;

(b) the mitigation of any adverse environmental impacts from timber harvest activities on such lands;

(c) reforestation of any lands referred to in Section 1 or any other lands within the external boundaries of the Quinault Indian Reservation: *Provided*, That nothing herein shall allow the Secretary of the Interior to substitute these funds for other appropriated funds or for Forest Management Deductions, funds presently available for reforestation; or

(d) for the purchase from willing sellers by the Quinault Indian Nation of any lands or interests in lands within the external boundaries of the Quinault Indian Reservation and any costs incurred by the Quinault Indian Nation incident thereto.

SEC. 9. SAVINGS PROVISIONS.—Nothing in this Act is intended to affect or modify—

(a) the proportional distributive shares of the respective counties of receipts from the sale of timber in the remaining lands of the Olympic National Forest;

(b) any property rights which may exist within the exterior boundaries of the Quinault Indian Reservation as it existed prior to enactment of this Act; and

(c) any valid existing rights-of-way, leases or permits of the Secretary of Agriculture or any person or entity in any of the lands referred to in Section 1."

PURPOSE

S. 2752 transfers almost 12,000 acres from the Forest Service to the Secretary of the Interior to include within the boundaries of the present 196,000 acre Quinault Indian Reservation. The bill requires that the Secretary of the Interior hold the land in trust for the Quinault Indian Nation. The bill also makes timber receipts from certain other Forest Service lands available to the Quinault Indian Nation and to certain counties to offset the loss of receipts resulting from the transfer of National Forest System lands to trust status. The Committee intends for S. 2752 to provide the Quinault Indian Nation with the resources to implement a land consolidation program on the Quinault Indian Reservation.

BACKGROUND

In 1873 President Grant issued an Executive Order establishing the Quinault Indian Reservation on the coast of Washington State. The land referred to in President Grant's Executive Order was described as follows:

Commencing on the Pacific Coast at the southwest corner of the present reservation * * * thence due east * * * 5 miles * * * thence in a direct line to the most southerly end of Quinault Lake; *thence northerly around the east shore of said lake to the northwest point thereof; thence in a direct line to a point a half mile north of the Queetshe River and 3 miles above its mouth;* thence with the course of said river to a point on the Pacific Coast at low-water mark, a half mile above mouth of said river; thence southerly at low-water mark, along the Pacific to the place of beginning.

Executive Order of Nov. 4, 1873.

At the time of President Grant's Executive Order, the region around Lake Quinault had not been surveyed and it was thought that the lake's axis ran in a north-south direction. Later it was discovered that the axis of the lake lies in a northeast-southwest di-

rection. The discrepancy led to some uncertainty, with respect to the location of the lake—one of the boundary locators, when the Quinault Reservation was first surveyed in the 1890's.

Contemporary correspondence indicates that two points were identified as possibilities for the northwest corner of the lake as specified in the Executive Order. The local Indian Agent and the Commissioner of Indian Affairs both recognized that the more northerly corner of the two points was the proper northwest corner of the lake under the Executive Order. (See Appendix I to the Committee's Report). However, they recommended that a more southerly point be used to establish the reservation boundary to avoid inconveniencing a number of non-Indian settlers, including the brother of the Superintendent of the Quinault Indian School, who had taken up claims along the shore of the lake between 1873 and 1892.¹

In 1891, Congress authorized the creation of public forest reservations.² In 1897, pursuant to the 1891 Act, President Cleveland set aside a large tract of forest land adjacent to the Quinault Reservation which later became the Olympic National Forest. The boundary of the forest reserve established by proclamation was defined by reference to the "North boundary of the Quinault Reservation." There was no indication that President Cleveland intended to diminish the Quinault Reservation as described in President Grant's 1873 Executive Order.

In 1938 the Olympic National Park was established. The Olympic National Park as described in the 1938 Act included portions of the Olympic National Forest which should have been part of the Quinault Reservation. The Act establishing the park, however, specifically recognizes and preserves existing property rights, including those of Indians.³

Today, approximately 9,600 acres of the land originally intended by President Grant to be part of the Quinault Reservation are within the Olympic National Forest and approximately 3,100 acres are within the Olympic National Park. Furthermore, the State of Washington, and Grays Harbor and Jefferson counties hold 1,270 acres and private parties hold 1,065 acres. A total of 15,038 acres were erroneously excluded from the Quinault Reservation.

To understand the full land picture of the Quinault Indian Reservation, it is important to trace how lands left communal ownership. The General Allotment Act of 1887, often referred to as the Dawes Act, ushered in a new era of federal Indian policy—a policy that has been clearly rejected by Congress and the Executive Branch.⁴ The Dawes Act authorized the President to allot commun-

¹ Correspondence dated February 23, 1892 from Commissioner of Indian Affairs T.J. Morgan to the Secretary of the Interior regarding a letter dated December 24, 1891 from Edwin Eells, U.S. Indian Agent at the Puyallup Agency, Tacoma, Washington (reprinted as Appendix I, *supra*).

² Included in the 1891 statute was a provision (now 43 U.S.C. 1197) which provides in part that: "Nothing in this Act shall change, repeal, or modify any agreements or treaties made with any Indian tribes for the disposal of their lands . . . ; and the disposition of such lands shall continue in accordance with the provisions of such treaties or agreements."

³ Act of June 29, 1938, 16 U.S.C. 251 et. seq.

⁴ See e.g., The Indian Reorganization Act of 1934, 25 U.S.C. sections 461 et. seq. which ended allotment generally.

ally-held tribal lands into individual parcels for reservation Indians.⁵ Parcels ranged in size from 80 acres to 160 acres. Passage of this legislation was based on the premise that Indians would not reach "any degree of civilization" without individual ownership of land.⁶ Many people at that time, however, suspected that another motivation for passage of the Dawes Act, though, was gaining ownership of Indian lands.⁷ Section 5 of the Act provided for the allotted land to be held in trust for 25 years, with a provision for the United States to acquire excess allotments after that time period had expired.⁸ Beginning in 1905 and continuing until 1934, and except for a parcel in the southern corner of the reservation managed by the Bureau of Indian Affairs as an experimental forest, the entire Quinault Reservation was allotted to individual Indians.⁹

The allotment policy has also resulted in a patchwork of individual Indian, tribal, and non-Indian ownership within the reservation boundaries because of provisions in the Dawes Act allowing Indians to sell their individual allotments. Approximately 30% of the Quinault Reservation had been alienated, and ownership of the remaining Indian trust allotments has become increasingly fractionalized as the result of heirship.¹⁰ This pattern has fostered extremely complex and costly management problems for the Bureau of Indian Affairs.

The Quinault Indian Reservation provides a tragic example of the Allotment policy at its worst. A 1972 memorandum from the Director of Economic Development for the Bureau of Indian Affairs to the Assistant Secretary for Public Land Problems, outlines a litany of problems with management of the Quinault Reservation. Those problems include incongruity of harvest contracts, watershed and stream clearance problems, lack of adequate reforestation programs, and lack of a comprehensive reservation road system.¹¹

In 1945 and 1951 the Court of Claims in two decisions, *Quinault Tribe of Indians v. United States* 102 Ct.Cl. 822 (1945), and 118 Ct.Cl. 220 (1951), reviewed the history of the boundary dispute. The Court agreed that the reservation boundary was erroneously surveyed in 1892. However, the first Court of Claims decision questioned the Quinault Tribe's right to recover. Congress responded to the first Court of Claims decision by enacting a statute declaring the Quinault Tribe the proper party to pursue an action against the United States for loss of reservation land "on behalf of all Indi-

⁵ Felix S. Cohen's *Handbook of Federal Indian Law*, Ch. 2, Sec. C2c (1982)

⁶ Wilkinson, Charles, *American Indians, Time and the Law* 8 (1987).

⁷ Cohen, Felix S., *Handbook of Federal Indian Law*, p. 209 (1942) "... but the minority report of the House Indian Affairs Committee in 1880 had gone even further in its accusations. It said: 'The real aim of this bill is to get at the Indian lands and open them up for settlement.' " *Id*

⁸ Cohen, Felix S., *Handbook of Federal Indian Law*, p. 131 (1982)

⁹ In *United States v. Payne*, 264 U.S. 446 (1924), the Supreme Court held that forested land capable of being cleared for cultivation was subject to allotment. The majority of the Quinault Reservation which is heavily forested was allotted pursuant to this decision, even though little, if any, of the land has been cleared, or is suitable for agriculture.

¹⁰ The Quinault Indian Nation owns approximately 10 percent of the Reservation which it has reacquired since the Reservation's allotment through purchase. On two prior occasions, through Congressional action, land has been returned to the Quinault Indian Nation. See Act of August 25, 1959, Public Law 86-198, 76 Stat. 913; and Act of October 15, 1962, Public Law 87-806, 73 Stat. 427.

¹¹ The memorandum states: "As pointed out in the January 26, 1972 report to the Tribal Council by their Study Group, completely satisfactory forestry management will not be possible without solving the land ownership problem in some manner."

ans having an interest in the Quinaielt Reservation." ¹² The statute read in pertinent part:

[T]he Quinaielt Tribe is hereby declared to be the proper party plaintiff for the purpose of further proceedings * * * and for the purpose of prosecuting the action to a final conclusion on behalf of all Indians having rights in the Quinaielt Reservation as established under the treaty of July 1, 1855, and January 25, 1856 (12 Stat. 971), the Executive Order of November 4, 1873, and any subsequent acts of Congress.

In support of this legislation, the Secretary of the Interior advised Congress that it "was proper to refer to the collective group (having rights in the Reservation) regardless of tribal blood as the Quinault Indians * * *" The Secretary further advised Congress that "[c]ollectively the Indians having an interest in that reservation, including those of the blood of other tribes consolidated with the Quinault pursuant to the treaty, Executive Order, and act of Congress may be regarded as one tribe." ¹³

After Congress confirmed the Quinault Indian Tribe as the proper party to litigate the claim for the excluded north boundary lands, the Tribe pursued the matter in the Court of Claims. In its second decision, the Court of Claims held that recovery for the land improperly excluded from the Reservation was offset by "payments and gratuities" provided by the United States since the Quinault Reservation was established. The case was dismissed without recovery and the Tribe sought no further review of the Court of Claims decision.

The Committee recognizes that principles of finality embodied in the doctrines of *res judicata* and collateral estoppel may well preclude the Quinault Indian Nation from seeking further judicial relief for the wrongful exclusion of Quinault Reservation lands. However, as a separate policy determination within Congress' authority over Indian Affairs, the Committee recommends passage of S. 2752 because the Committee believes that inconsistent Federal policy during this century has denied the Quinault Indian Nation a land base and because the return of the lands at issue will provide the Quinault Indian Nation with resources essential to the implementation of a desperately needed land consolidation program on the Quinault Indian Reservation.

STATEMENT OF POLICY

In recent years the Committee has considered several bills to reserve Federal land to be held in trust for Indian tribes. The Committee considered each bill on a case-by-case basis and has evaluated each one on its merits—both in terms of the efficacy of extent claims as well as in terms of the best use of a public resource. Here, the Committee has agreed that the best use of the land in question is to provide a sound economic base for the Quinault Indian Nation.

¹² 61 Stat. 416.

¹³ H.R. Rept. No. 671, 80th Cong., 1st Sess. (1947).

The Committee's decision is not unlike a decision to reserve Federal land for other purposes such as to establish a wilderness area, a national park, a national scenic area, or a wildlife refuge. The decision is similar to a determination to develop public land, thus denying its use for non-developmental purposes, such as a decision to harvest timber or develop recreational activities.

The Committee's support for transfer of this land is not based on any legal entitlement the Quinault Indian Nation may have to the land. The Committee recommends passage of S. 2752 because the Committee believes that transfer of the land is the most appropriate use in this instance of public lands and is necessary to meet the nation's moral commitment to provide an adequate land base for the Quinault Indian Nation.

LEGISLATIVE HISTORY

S. 2752 was introduced in August 11, 1988 by Senator Evans and referred to the Senate Select Committee on Indian Affairs. A companion measure was introduced in the House of Representatives by Congressman Al Swift. The Select Committee on Indian Affairs held a hearing on S. 2752 on September 12, 1988.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

The Select Committee on Indian Affairs in open business session on September 29, 1988 by unanimous vote of a quorum present, adopted an amendment in the nature of a substitute and ordered the bill reported with a recommendation that S. 2752 do pass as amended.

EXPLANATION

S. 2752 is intended to include within the Quinault Reservation land erroneously excluded from the reservation as a result of a surveying error.

The bill directs the Secretary to hold the land in trust for the Quinault Indian Nation because Congress declared the Quinault Indian Nation to be the proper party to pursue the claim and because the Committee is aware that membership in the Quinault Indian Nation is open to all Indian residents of the Quinault Reservation who are descendants of the tribes for whom the reservation was established. The legislation will also provide the Quinault Indian Nation with the means to institute a land consolidation program addressing the problems of checkerboard and fractionated land ownership on the Quinault Reservation. The legislation accomplishes this purpose by restoring to tribal trust status approximately 11,900 acres of the land currently administered by the Forest Service which were originally intended to be included within the Reservation under the provisions of the Executive Order of November 4, 1873. Another approximately 5,400 acres of Forest Service land will continue to be held and managed by the Forest Service with a portion of the timber receipts derived from these lands dedicated to land consolidation and other uses on the Quinault Reservation. The income derived from this area is intended to offset revenues lost from land erroneously excluded from the Reser-

vation which is currently administered as part of the Olympic National Park or held by state, municipal, and private landowners.

The legislation provides that land referred to in Section 1 will be held by the United States in trust for the Quinault Indian Nation. Timber receipts derived from land referred to in Section 1 and a portion of the timber receipts from land referred to in Section 2 will be held by the Secretary of the Interior in a special account. The legislation allows the Quinault Indian Nation to draw on this account to fund a land consolidation program, and to pay tribal costs incurred in connection with the preparation and administration of timber sales, mitigation of adverse environmental impacts arising from timber harvest, road construction, and related timber management and harvest activities, and reforestation of lands within the reservation boundaries. The Committee intends that the provisions relating to use of timber receipts be broadly construed to allow the use of funds to defray tribal expenses incident to or otherwise reasonably related to allowable expenditures under this legislation. The Committee also intends that the funds generated as the result of this legislation be used to supplement, and not replace other funds appropriated by the United States or otherwise made available for forest management on the Quinault Indian Reservation.

SECTION-BY-SECTION ANALYSIS

Section 1

Expansion of Quinault Indian Reservation.—This section expands the Quinault Indian Reservation to include lands currently administered by the Forest Service which were intended to be a part of the Reservation under the 1873 Executive Order. The boundaries of the area added to the Quinault Reservation generally conform to readily ascertainable natural features and existing roads.

Section 2

Quinault Special Management Area.—This section authorizes the Secretary of Agriculture to manage lands that shall be known as the Quinault Special Management Area. A share of the proceeds from the sale of forest products will be distributed to counties and the Quinault Indian Nation as provided for in Section 4 and referred to in Section 8. The tribal share is provided as a substitute for park, state, municipal, and private land which are not restored to the Quinault Indian Nation by this Act. The increased county share is provided to alleviate the impact of the loss of timber receipts to counties as a result of the land transfer in section 1.

Section 3

Administration of Lands.—Subsection (a) directs the Secretary of Agriculture to transfer lands referred to in Section 1 to the Department of the Interior. Title to land referred to in Section 1 shall be held by the United States in trust for the Quinault Indian Nation. Administration of this land may be contracted to the Quinault Nation pursuant to the provisions of the Indian Self-Determination Act, Public Law 93-638, as amended. The Committee expects the

Forest Service to continue management of the Quinault Special Management Area in accordance with the Olympic National Forest Plan developed pursuant to the National Forest Management Act and any amendments pursuant to the National Forest Management Act. In addition, the Committee expects that the Quinault Special Management Act will continue to be managed in accordance with all other laws, rules and regulations relating to management of the National Forest System.

Subsection (b) provides that the land referred to in Section 2 shall continue to be owned by the Forest Service and that lands referred to in both section 1 and 2 will continue to be managed pursuant to the Grays Harbor Sustained Yield Management Plan. (See Appendix II to the Committee's Report.) However, timber receipts from lands referred to in Section 2 shall be distributed as provided in Section 4.

Section 4

Receipts from National Forest System Lands.—Subsection (a) authorizes the Secretary of Agriculture to receive from the gross proceeds from the sale of forest proceeds referred to in Section 2 an amount not to exceed 10 percent for preparation and administration of timber sales, similar to practice for Bureau of Indian Affairs management of Indian lands.

Subsection (b) authorizes the further distribution of gross proceeds from the lands referred to in Section 2, and distributes 45% of the proceeds to the account referred to in Section 8, and 45% of the proceeds to the State of Washington pursuant to the Act of May 23, 1908 (C. 192, 35 Stat. 251 as amended; 16 U.S.C. 500.) The Committee amendment provides increased fees to the State of Washington for Grays Harbor and Jefferson counties to offset losses from section 1 land transfer. Nothing in this subsection is intended to create any additional liability or fiduciary duty of the Department of Agriculture, beyond that which the Department of Agriculture may have under existing law, for the management of lands within the Quinault Special Management Area.

Section 5

Limitations on Timber Harvest.—Subsection (a) directs the Secretary of the Interior to place the same restrictions upon the sale of any unprocessed timber from lands referred to in Section 1 regarding either export of timber from the United States, or purchase of timber in substitution for timber exported from private lands as are in effect for timber sold from Quinault Ranger District of the Olympic National Forest.

Subsection (b)(1) requires sustained yield management of timber on Section 1 lands. Timber sold from lands referred to in Section 1 shall not be combined with other lands within the Grays Harbor Federal Sustained Yield Unit for the purpose of meeting the sustained yield requirements of this subsection of the legal processing requirements of subsection (b)(2). Instead, the Committee expects for these requirements to be met without pooling Quinault land with other federal lands or with other tribal lands. The sustained yield requirement of this subsection is in addition to the existing sustained yield requirements applicable to the management of

tribal timber contained in 25 U.S.C. 407 and 466. The Committee intends that these limitations on the rate of harvest be applied with flexibility to permit the Quinault Indian Nation to adjust the volume of timber sold in any given year in response to market conditions.

Subsection (b)(2) directs the Secretary of the Interior to impose the same processing requirements for timber sold from lands referred to in Section 1 as are required by the Grays Harbor Federal Sustained Yield Unit at the time the timber is sold. Under current Grays Harbor Federal Sustained Yield Unit requirements, up to 50% of the volume of annual programmed harvest from the Quinault Range District may be offered for sale without competitive restrictions on the location of manufacture of said timber. Thus, up to 50% of the timber sold from lands referred to in Section 1 could be sold without competitive restrictions on the location of manufacture of said timber within the United States. If the Grays Harbor Federal Sustained Yield Unit processing requirements should be revised in the future it is the intent of Congress that the Secretary of the Interior similarly adjust processing requirements for lands referred to in Section 1.

Section 6

Existing Rights-of-Way and Other Interests.—Subsection (a) preserves for the Secretary of Agriculture permanent easements over certain identified Forest Service right-of-ways. The Committee expects that the Forest Service will retain a responsibility to pay a proportional share of road maintenance costs resulting from continuation of easements. This right to access includes the right of public to cross lands referred to in section 1 when necessary to gain access to adjacent National Forest lands.

Section 7

Access to National Forest Lands.—Subsection (a) grants the Secretary of Agriculture such rights-of-way as may be deemed necessary across the land added to the Reservation. (b) Subsection (b) provides the Secretary of the Interior with a reciprocal right to access to Reservation lands across Forest Service land. Nothing in this Act or this section should be construed to limit the right of the Quinault Indian Nation to regulate public use of reservation lands.

Section 8

Use of Timber Sale Proceeds.—This section establishes a special account for timber receipts derived from the land added to the Reservation. Moneys from this account are to be used by the Quinault Indian Nation for costs of administering timber sales including road construction and maintenance; mitigating adverse environmental impacts from timber harvest activities; providing for reforestation of lands within the reservation boundaries; or for the purchase of land from willing sellers within the reservation boundaries. The Quinault Indian Nation already possesses the right to purchase land within the reservation boundaries. The Quinault Indian nation may withdraw funds from this account in amounts it determines are appropriate for any of the allowable uses specified in this section.

Section 9

Savings Provisions.—The Committee does not intend for this Act to affect or modify the proportional shares of the respective counties from the sale of timber in the remaining lands of the Olympic National Forest. Nor does the Committee intend that this Act affect or modify any property rights which may exist within the exterior boundaries of the Quinalt Indian Reservation as the reservation existed prior to enactment of this Act. Additionally, the Committee intends that any valid existing rights-of-way, leases or permits of the Secretary of the Agriculture or any person or entity in any of the lands referred to in Section 1 shall not be affected or modified. In particular, the rights of purchasers under all existing timber sale contracts entered into by the Forest Service are preserved.

LEGISLATIVE HISTORY

S. 2752 was introduced on August 11, 1988 by Senator Evans, and was referred to the Senate Select Committee on Indian Affairs. H.R. 5203, a companion measure, was introduced in the House of Representatives by Congressman Al Swift and referred to the House Agriculture and Interior Committee. The Select Committee on Indian Affairs held a hearing on S. 2752 on September 12, 1988. The House Interior and Insular Affairs Committee held a hearing on September 22, 1988 and ordered the bill reported favorably with an amendment in the nature of a substitute on September 28, 1988. The substitute amendment to S. 2752 as reported by the Committee is identical to the substitute amendment to H.R. 5203 ordered reported by the House Interior and Insular Affairs Committee.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

The Select Committee on Indian Affairs, in open business session on September 29, 1988, by unanimous vote of a quorum present, adopted an amendment in the nature of a substitute and ordered the bill reported with a recommendation that S. 2752 do pass as amended.

COST AND BUDGETARY CONSIDERATION

The cost estimate for S. 2752 as amended, as provided by the Congressional Budget Office, is set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 30, 1988.

HON. DANIEL K. INOUE,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 2752, a bill to declare that certain lands be held in trust for the Quinalt Indian Nation, and for other purposes, as ordered reported by the Senate Select Committee on Indian Affairs on September 29, 1988. We estimate that enactment of this legislation will result in additional outlays by the federal government totaling

approximately \$375,000 annually over the next five years. This would not require appropriations action. In addition, the Bureau of Indian Affairs would realize some administrative savings in future years.

S. 2652 would add 11,905 acres of land to the Quinault Indian Reservation and would require that those lands be held in trust for the tribe and managed by the Department of the Interior. These lands are currently managed by the Forest Service (FS) as part of the Olympic National Forest. The bill would place certain restrictions on timber harvesting activities on these lands. All receipts generated from the sale of timber from these lands in the future would be placed in a special fund and would be available only for specified activities of the Quinault Tribe, including land consolidation.

The bill would also require the Secretary of Agriculture to manage a 5,460-acre tract of land in the Olympic National Forest as a special management area. Ten percent of the receipts from the sale of timber from this special management area would be available to the FS, without further appropriation, for specified purposes. The remaining receipts from these lands would be split evenly between the State of Washington and the special fund established by this bill for the Quinault Tribe.

S. 2552 also contains miscellaneous provisions for the protection of rights-of-way and access across the federal lands affected by this bill.

The primary impact of this bill would be to change the way certain timber receipts are distributed. Under current law, 25 percent of the receipts from the land affected by this bill (approximately \$125,000 annually) are distributed to the counties in the Olympic National Forest area. The remaining receipts—estimated to total about \$375,000 annually—are deposited in the general fund of the Treasury.

This bill would require that these receipts now be split between the counties, and certain special funds from which they would be spent without appropriation action. As a result, about \$375,000 a year that now goes to the Treasury would instead be spent.

By providing the Tribe with a source of funds for land consolidation activities, CBO also expects that over time, enactment of this bill would result in some administrative cost savings to the Bureau of Indian Affairs (BIA). While precise estimates of these savings are not available, we expect that by the early 1990's BIA would realize administrative savings totaling about \$300,000 annually.

We expect enactment of S. 2752 to result in a loss of receipts to the counties in the Olympic National Forest area totaling about \$50,000 annually.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Theresa Gullo, who can be reached at 226-2860.

Sincerely,

JAMES L. BLUM,
Acting Director.

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 2752 as ordered reported will have no regulatory or paperwork impact.

EXECUTIVE COMMUNICATIONS

The Committee has received the following correspondence from the Department of Agriculture and Department of Justice:

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, DC, September 30, 1988.

Hon. DANIEL K. INOUE,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This is in reply to your request for the views of this Department on S. 2752, a bill "To declare that certain lands be held in trust for the Quinault Indian Nation, and for other purposes."

The Department of Agriculture opposes enactment of S. 2752 for the reasons discussed below.

S. 2752, as introduced, would transfer about 11,905 acres of the Olympic National Forest to the Department of the Interior to be held in trust for the Quinault Nation as a part of the Quinault Indian Reservation. An additional 5,460 acres of the Olympic National Forest would be transferred to the Quinault Nation in lieu of a transfer of certain other lands within the area of the original claim. These other lands are currently owned or under the jurisdiction of the Olympic National Park, the State of Washington, and private landowners.

A brief summary of the history of the Quinault claim is helpful in discussing the legislation. Following passage of the Indian Claims Act of 1925, the Quinault Nation filed a claim for the lands along the north boundary of the reservation. The claim for these excluded lands was adjudicated in the Court of Claims in 1945 and 1951 (*Quinault Tribe of Indians v. United States*, 102 Ct. Cl. 822 (1945) and 118 Ct. Cl. 220 (1951)). In the final adjudication, the court determined that the boundary had been erroneously surveyed, and lands were excluded from the reservation. The court found that although the Tribe was entitled to a monetary award of damages from the United States for these excluded lands, the damages due were offset by payments and gratuities provided by the United States to the Quinault Tribe. The Department of Justice also has concerns in this regard and has expressed their view in a separate letter to you.

We have a number of concerns about S. 2752 and about the larger public policy questions which it raises.

Throughout this century, the Federal Government has attempted to settle Native American claims resulting from the non-Indian settlement and development of the United States and subsequent taking of Indian lands. The attempts have been only partially suc-

cessful. Various jurisdictional statutes have provided for legal remedies, principally monetary damages. The Indian Claims Commission Act of 1946 was the broadest attempt to provide a mechanism for resolving legal, equitable, and moral claims. By the time the Commission expired in 1978, over 617 claims were docketed and awards in excess of \$818 million were made in 274 cases (Indian Claims Commission, 1978 Annual Report, September 30, 1978).

We strongly oppose the transfer of the 5,460-acre parcel of National Forest land to compensate for disputed lands now owned under the jurisdiction of the Olympic National Park, the State of Washington, and private landowners. The National Forests are not a reservoir of land from which all claims are to be resolved. In 1897, President Cleveland reserved the lands which became the Olympic National Forest for very specific national purposes. These purposes are no less important than those of National Park, State, or private lands. Furthermore, the transfer of lands under S. 2752 would restrict access to the remaining National Forest lands.

We recognize that the Committee reported S. 2752 with an amendment that would transfer only the 11,905-acre block. Instead of transferring the additional 5,460-acre parcel, the Committee reported bill would retain this parcel as National Forest land and set it aside as a special management area. The amendment would provide that receipts from this land would be split between the counties and the Quinault Indian Nation. The Forest Service would retain a portion for management purposes.

Both S. 2752 as introduced and S. 2752 as amended and reported raise a number of serious concerns for the Department and the Administration. The Office of Management and Budget advises that the Administration remains strongly opposed to this legislation.

Sincerely,

PETER MYERS.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, September 22, 1988.

HON. DANIEL K. INOUE,
Chairman, Senate Select Committee on Indian Affairs,
Washington, DC.

DEAR MR. CHAIRMAN: This letter is to provide the views of the Department of Justice with respect to the Senate Select Committee's July 15, 1988 memorandum on the "Quinault North Boundary Claim" relating to S. 2752, a bill to "declare that certain lands be held in trust for the Quinault Indian Nation, and for other purposes." The Department recommends against enactment of this legislation, and if it is enacted we will recommend that the President veto the bill. We would like to address our specific comments to several of the points made in the Committee memo.

First, the memo asserts that, because of factual similarities, and parallels in the outcome of the adjudication, between this claim and the erroneous survey claims of the Yakima Tribe and Warm Springs Tribe, S. 2752 should be enacted. The Department does not believe that whatever similarities may exist mandate enactment of

S. 2752. As a representative of the Department of Agriculture has testified, the Quinault Nation's claim to the excluded lands was fully adjudicated in accordance with applicable law. Under the governing special jurisdictional act, the Court of Claims was authorized to deduct gratuities from the amount of the award for the value of the excluded land, and did so. See *Quinault Tribe v. United States*, 118 Ct. Cl. 220, 227-228 (1951). If this fact alone justified reopening the claim, then countless Indian claims under special jurisdictional acts would have to be reopened because awards were frequently cancelled out by the amount of gratuities the Court of Claims was authorized to deduct. Such a notion runs directly counter to the basic purpose of the Indian Claims Commission Act, 60 Stat. 1049, 25 U.S.C. § 70 *et seq.* (1976). The Act constituted very broad remedial legislation designed to finally dispose of all "ancient" tribal claims (*i.e.*, all claims which arose prior to August 13, 1946), such as the Quinault Nation's erroneous survey claim, and Congress intended the Act to be the exclusive remedy for these claims. *Navajo Tribe v. State of New Mexico*, 809 F.2d 1455, 1460-1464 (10th Cir. 1987).

Second, the memo cites section 2 of the 1974 amendment to the Act, (which provides that certain expenditures shall not be deemed "payments on the claim"), and states that the issue of gratuitous expenditures that offset awards of compensation is very similar to the issue of payments on the claim. However, the Act made a clear distinction between "payments on the claim" and "money or property given or funds expended gratuitously for the benefit of the claimant." Section 2 of the Act *mandated* the deduction of "payments on the claim" (*e.g.*, payments made to a tribe in fulfilling the Government's obligations under a treaty of cession) from the amount of an interlocutory award previously entered in favor of a tribe. See *Prairie Band of the Pottawatomie Tribe v. United States*, 215 Ct. Cl. 1, 9, 564 F.2d 38, 42 (1977). By contrast, the deduction of funds expended gratuitously from an interlocutory award was solely a matter of discretion. 215 Ct. Cl. at 9, n. 8. See also *United States v. Assiniboine Tribes*, 192 Ct. Cl. 679, 695-696, 428 F.2d 1324, 1333 (1970). Thus, the problem addressed by the 1974 amendment had nothing to do with offsetting gratuities.

Third, the Committee states that Congress repealed the provision of the Indian Claims Commission Act that allowed for offsets against pending claims. Even though the entire Act was repealed, the Act still applied to claims pending thereunder at the time of repeal; these claims were transferred to the Court of Claims and subsequently to the Claims Court. Act of October 8, 1976, Pub. L. No. 94-465, 90 Stat. 1990, and Act of April 2, 1982, Pub. L. No. 97-164, 96 Stat. 27. The "payments on the claim" and "gratuities" provisions (*i.e.*, the offsets provisions) of the Act still apply to these pending claims.

Fourth, the Committee states that the Quinault Indian Nation and other tribes criticized the Indian Claims Commission for failing to take account of the "value of timber in the North Boundary area, which today far exceeds the value of the raw land." The Quinault Nation's erroneous survey claim was presumably not presented to the Commission. If it had been (assuming it was not barred by *res judicata* or collateral estoppel), the Commission

would not have been empowered to value the North Boundary area land by utilizing stumpage prices for the particular timber species involved. *E.g., Minnesota Chippewa Tribe v. United States*, 26 Ind. Cl. Comm. 22, 28 (1971). Rather, the Commission was empowered only to take account of the presence of timber when valuing land. It valued land and the timber thereon, taken together as a whole, as of the date title to the land was taken or otherwise lost. 26 Ind. Cl. Comm. at 31-32. Furthermore, the Commission was not empowered to make an award based on the present-day value of timber land or any other kind of land, *Nooksack Tribe v. United States*, 162 Ct. Cl. 712, 718 (1963), *cert. denied*, 375 U.S. 993 (1964). *See also Pillager Bands of Chippewa Indians v. United States*, 32 Ind. Cl. Comm. 156, 171 (1973).

Finally, on page 7 of the memorandum the Committee suggests that the reason for the proposed transfer of the 15,000 acres of the Olympic National Forest is to compensate the Quinault Nation for the Government's presumably inadequate management of timber resources on the Quinault Reservation. On this point, we must stress that the adequacy of the Government's management to timber resources on the Quinault Reservation is the central issue in money damage claims brought by both the Quinault Indian Nation and Indian allottees presently pending before the United States Claims Court in *Helen Mitchell, et al. v. United States*, Nos. 772-71, 773-71, 774-71 and 775-71. The Government deserves to have the issue of the adequacy of its management litigated in court, rather than to have a presumption of inadequacy serve as the implicit rationale for a transfer of 15,000 acres of National Forest land to the Quinault Nation before the *Mitchell* claims have been fully adjudicated.

For the foregoing reasons, the Department recommends against enactment of S. 2752 and will recommend a veto if the bill is enacted. The Office of Management and Budget has advised that there is no objection to the submission of this report and that enactment of S. 2752 would not be in accord with the program of the President.

Sincerely,

THOMAS M. BOYD,
Acting Assistant Attorney General.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that enactment S. 2752 will not result in any changes in existing law.

APPENDIX I.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, February 23, 1892.

The Honorable SECRETARY OF THE INTERIOR.

SIR: I am in receipt of a communication from Agent Eells of the Puyallup, &c., Agency, Washington, dated December 24, 1891, in which he states that the matter of the north boundary line of the Quinaielt reservation is exciting some discussion, and that there has been such a decided difference of opinion regarding two points that the matter has been referred to him by the Surveyor-General with the request that he investigate them and report the facts to this Office, so that he (the Surveyor-General) can get the opinion of this Office concerning the merits of the question.

It appears from the Agent's report that when the treaty was made with the Quinaielt Indians, the boundary lines were quite definitely fixed with regard to the original treaty reservation, but that in 1875, when the reservation was enlarged by Executive Order, the location of the lake (Quinaielt,) was known only by general description obtained from the Indians, the country being entirely unexplored.

The description in the Executive Order of November 14, 1873, is as follows:

Commencing on the Pacific coast at the south-west corner of the present reservation, as established by Mr. Smith in his survey under contract with superintendent Miller dated September 16, 1861; thence due east, and with the lines of said survey, five miles to the south-east corner of said reserve thus established; thence in a direct line to the most southerly end of Quinaielt lake; thence northerly around the east shore of said lake to the north-west point thereof; thence in a direct line to a point a half mile north of the Queetshoe river and three miles above its mouth; thence with the course of said river to a point on the Pacific coast at low water mark a half mile above the mouth of said river; thence southerly, at-low water-mark, along the Pacific to the place of beginning.

According to Agent Eells it was supposed at the time that the general course of Quinaielt lake was north and south and that when the points were designated it was intended to take in the shores of about on-half of the lake. Later explorations, however, have determined the fact that the lake lies in a different direction, viz: north-east and south-west, so that there is in reality no north-west point as was supposed at the time the order was made.

Within the past few years quite a number of settlers or squatters have taken claims along the shores of the lake, one of them being a

former engineer in the employ of the Northern Pacific Railroad Company. He claims that in accordance with engineering rules the north-west point is where a line drawn north 45° east would first touch the lake. In conformity with this opinion he took up a claim and has made valuable improvements thereon.

Others by his advice have done the same. To run the line from the north-west point as designated by the Surveyor-General would include within the boundary of the reservation a number of claims upon which considerable improvements have been made. Agent Eells encloses a drawing of the lake as made by the local surveyor, also sketches and diagrams made by Mr. Gilman, a claimant to the lands. Agent Eells also encloses maps, &c., and states that the land about the lake is entirely unoccupied by Indians and has never been used by them, except for the purpose of hunting.

He also states that the western end of the line is in dispute. The case is the same as to the river as it is in regard to the lake, as but little was known of its course when the Executive Order was prepared. The general construction has been that the *general* course of the river was meant. It now appears that the river is exceedingly crooked between its mouth and a point three miles above it, and that by keeping just half a mile from the river the line is so crooked that three miles from its mouth does not extend any great distance from the ocean. Settlements have been made here by the Indians. He submits a diagram showing the difference between the two points determined by following the general course of the river and following its actual course. Agent Eells appears to be of the opinion that the northwest point may be determined according to the wishes of the settlers without detriment to the Indians, but that they will be greatly injured if the other point is determined by the actual course of the river.

The Surveyor-General is inclined to locate the north-western corner of the reservation at the eastern point and the western end in accordance with the actual course of the river.

From Agent Eells' report and the maps presented, I am inclined to believe that a strict construction of the description in the treaty would fix the north-west point of the lake at the most northerly point of the lake, as indicated by the Surveyor-General ("A" on the diagram), although this would doubtless throw the boundary further east than was intended by the Executive Order, as a sketch of the reservation made at the time shows the lake to lie in a north and south direction, instead of a north-east and south-west direction.

In view of the facts, however, as stated by Agent Eells, that the Indians are not settled upon any portion of the lands affected by the confusion in the boundaries at this point, and that white settlers have located thereon, I do not think that this point should be insisted upon if the western line can be run so as to retain the lands occupied by the Indians. It is suggested that the recommendations of Agent Eells be carried into effect—that is, that the north-west point of the lake be accepted as being located at "B" on the blue print showing the lake, and that the boundary run thence in a direct line to a point a half mile north of the Queetchee River and three miles above its mouth, thence with the *general* course of said river to a point on the Pacific coast, &c., as shown by line

* * * of the western part of the reservation (* * * of maps drawn by Deputy Surveyor Morton L. Taylor, December 15, 1891), and that the Commissioner of the General Land Office be so advised.

I transmit the maps and diagrams and a copy of Agent Eell's report.

Very respectfully,

T.J. MORGAN,
Commissioner.

PUYALLUP AGENCY,
Tacoma, WA, December 24, 1891.

Hon. T.J. MORGAN,
Commissioner, Indian Affairs,
Washington City, DC.

SIR: The matter of the north boundary line of the Quinaielt Indian reservation, is exciting some discussion, and there has been such a decided difference of opinion regarding the two points, that the matter has been referred to me by the Surveyor General, with the request that I investigate it and report the facts to you, so that he can get the opinion of your office concerning its merits, and be able to follow your wishes in the matter.

When the treaty was made with the Quinaielt Indians the boundary lines were quite definitely fixed, and with regard to the original treaty reservation there is no dispute.

Later in 1873, when Gen. R.H. Milroy was Supt. of Indian Affairs, and as I understand it, at his recommendation, an Executive Order was made dated November 4, 1873, enlarging it. The country was at that time entirely unexplored and the location of the lake known only by general description obtained from the Indians. It was supposed that its general course was north and south, and when the points were designated it was intended to take in the shores of about one-half of the lake. Later explorations determined the fact that the lake lies in a different direction viz: north-east and south-west, so that there is in reality no north-west point as was supposed at the time the order was made. Within the past few years quite a number of settlers or squatters have taken claims along the shores of the lake. One of the principal ones was a gentleman by the name of Samuel C. Gilman, a former engineer in the employ of the North Pacific Rail Road Company. Taking the words of the Executive Order and the general topography of the lake, he located what he supposed to be the north-west point of the lake, which he claimed is according to engineering rules to be the point where a line drawn north 45 deg. east would first touch the lake. In conformity with this opinion he took up a claim and has made valuable improvements thereon. Others by his advice have done the same, among whom it a brother of E.W. Agar the present Supt. and head teacher of the Quinaielt Indian boarding school. The Surveyor General has designated the most northern end of the lake as the north-west point. To run the line from this point would include within the boundary of the reservation a number of claims, on which considerable improvements have been made.

I enclose herewith a drawing of the lake as made by the local surveyor, and a letter from him, also sketches made by Mr. Gilman with a letter from him. The land about the lake is entirely unoccupied by Indians, and never has been used by them except for the purposes of hunting. In case there should be transportation facilities for getting there, it is not likely they would ever use it. Should there be some way of getting in there in the near future, and no more Indians go on to the reservation than there now are, there would still be enough left that is desirable for them to use. This is about the state of the case regarding that point.

The western end of this line is also in dispute. The language of the Executive Order is "to a point half a mile north of the Queet-shee River and three miles above its mouth, thence with the course of said river to a point on the Pacific Coast at low water mark, half a mile above the mouth of said river." As with the lake, so with this river, but little was known of its course, but it is reasonable to suppose it was understood to run about west direct to the ocean. The general construction has been that the *general* course of the river was meant. But it now appears that the river is exceedingly crooked at that place, and by keeping just half a mile from the river, the line is so crooked that three miles from its mouth does not get any great distance from the ocean. Settlements have been made here by the Indians, and one Indian by the name of Fisher has taken a claim above where the boundary line would come should the *exact* course of the river be followed instead of the *general* course. I believe a white man has since located on the same piece, but from the information I have, the equity is all on the side of the Indian. I do not understand that any one will be affected to any extent between the two ends of this line. At this end of the line it is clear to me that the most northerly line on the plat herewith submitted should be the one adopted. I think that the original intention of the order, as well as equity regarding the rights of the occupants and the general good of the Indians would all be best subserved by the adoption of this line, and unhesitatingly recommend its adoption.

As regards the lake, were I looking at the map independent of any engineering rules, or any rights of settlers, taking everything into consideration, I should select a point nearly north of the south end of the lake as coming the nearest to the original intent of the order. What rules of engineering apply to it I know nothing about. I believe the parties who have gone in there have made their improvements in good faith, and not with any intention of encroaching on to the reservation and at present they do not conflict with any claims or improvements of individual Indians, and as it is an Executive Order extension of the reservation, and not due to any obligations Government is under to the Indians as a tribe, they could base no complaint were they to lose this tract. Were it not for this, as I said above, I should locate it nearly north of the point where the south boundary line strikes the lake, but, in consideration of all the facts, it might be best to allow these settlers to hold their claims and make the point marked "B" on the surveyor's blue print the starting point for the line to the ocean.

This I think will give you as clear a description of the case as I am able to do, and I respectfully request that you will consider it

as soon as convenient, and notify the Land Office so that instructions can be given the local surveyor as soon as possible and in time for him to commence work in the spring.

I transmit maps, letters, &c. herewith explaining the location of the different points.

Very respectfully,

Your obedient servant,

EDWIN EELLS,
U.S. Indian Agent.

APPENDIX II

NOTICE OF DECISION—REVISED POLICY STATEMENT FOR GRAYS HARBOR FEDERAL SUSTAINED YIELD UNIT, OLYMPIC NATIONAL FOREST

Section IV of the Policy Statement for the Grays Harbor Federal Sustained Yield Unit, (as amended 3/2/81), requires that the Forest Service conduct a five year study to determine if the requirement for primary manufacture of National Forest Unit Timber within the Grays Harbor Area has any material effect on the attainment of Unit objectives. There has been concern that the requirements actually have little effect on the local community. Beginning in 1981, the manufacturing requirement was incrementally reduced by ten percent per year until a 50% exempt level was reached in 1985.

A review and analysis of log volume patterns, purchaser competition for Unit timber, and log distribution during the five year study period has revealed no substantial difference between exempted and non-exempted volume (Grays Harbor Federal Sustained Yield Unit—Analysis Report—September 1986). This Analysis Report considered three alternatives relative to the future of the Unit.

(A) Continue at the 50% exempt level of 1985;

(B) Return to a 100% required local manufacturing level;
and,

(C) Dis-establish the Unit.

A proposed recommendation by the Forest Supervisor, Olympic National Forest, to adopt Alternative C was identified in the Report.

Public distribution of the Analysis Report and a Notice of Public Hearing (November 12, 1986) to receive comment on the Analysis and the proposed alternative recommendation, was issued on November 7, 1986. Written responses for inclusion in the official record were accepted through November 26, 1986.

Based on a thorough review of the Analysis Report, written public responses and testimony at the Public Hearing, I have determined that:

(1) An evaluation of the 5-year study period has demonstrated no significant change in where Unit timber is manufactured;

(2) No direct relationship between current Unit policy requirements and community stability has been demonstrated;

(3) Citizens and public officials located within the Unit believe there is a grave risk that current Unit manufacture will not be able to successfully compete with manufacturers outside of the Unit if the Unit is dis-established. Mill operations might have to be curtailed, jobs lost and community stability threatened;

(4) The major direct administrative costs to the Government relate to periodic reviews and public notification requirements for timber sales offered under Unit restrictions;

(5) The 5-year study period included an unprecedented, dramatic change in timber industry market conditions and therefore may not be representative of future conditions;

(6) There is still a major concern that the Unit is not effectively contributing to meeting the objective of community stability and that some form of action is needed to help in the determination of the Unit's influence. Is the Unit an efficient tool for the maintenance of community stability in the Grays Harbor Area?

Therefore, I have decided to adopt a variation of Alternative A. Fifty percent (50%) of the volume of the annual programmed harvest from the Quinault Ranger District may be offered for sale without competitive restrictions on the location of manufacture. The Regional Forester may establish annual amounts of exempted volume at levels lower than 50 percent as he deems appropriate. This authority may be redelegated to the Forest Supervisor, Olympic National Forest.

To minimize administrative/operational constraints, the exempted volume may vary between 45 and 55 percent in any given year. After the first year, the *cumulative annual totals* should not exceed 50% exempt volume.

For those sales that are exempt from the local manufacturing requirement, the Forest Supervisor shall use the procedures and standards for notices of timber sales, sale advertisement and competitive bidding that are applicable to the sale of timber on the remainder of the Olympic National Forest (except for the Shelton Cooperative Sustained Yield Unit).

The schedule for periodic reviews of the status of the Unit is hereby revised. The next review should be scheduled no later than 10 years from the date of this decision.

Section IV—*Sale of Timber* and Section VIII—*Accomplishment of Objections* of the Policy Statement for the Grays Harbor Unit have been revised to reflect this decision. Section V—*Rate of Cutting* has been updated to reflect current terminology. The Amended Policy Statement will become effective on —.

This decision is subject to administrative review (appeal) pursuant to 36 CFR 211.18. A notice of Appeal must be filed with the Chief of the Forest Service within 45 days from the date of this Notice of Decision.

June 2, 1987.

AMENDED POLICY STATEMENT FOR THE GRAYS HARBOR FEDERAL SUSTAINED YIELD UNIT, 1987

I. GENERAL OBJECTIVES

The purpose of the Act of March 29, 1944 (58 Stat. 132; 16 U.S.C. 583-583i), is to stabilize communities, forest industries, employment, and taxable forest wealth; to assure a continuous and ample supply of forest products; and to secure the benefits of the forest in the regulation of water supply and stream flow, prevention of soil erosion, amelioration of climate and preservation of wildlife.

This policy statement is designed to facilitate the accomplishment of these purposes, and to achieve the objectives of harvesting annually the full allowable sustained yield production from the Grays Harbor Federal Sustained Yield Unit established by the Chief, Forest Service, on November 2, 1949, and amended August 29, 1952, and amended March 15, 1968,¹ and amended March 2, 1981¹ hereinafter called the Unit.

Applicable provisions to effectuate this policy statement will be included, as conditions of sale, in timber sale contracts covering National Forest timber in the Unit.

II. LIMITS OF ZONE OF PRIMARY MANUFACTURE

All timber and forest products sold from National Forest lands within the Unit, except as otherwise provided, will be required to be given at least primary manufacture within the Unit or Grays Harbor County, State of Washington, except Section 1, 2, 3, 10, 11, 12, 13, 14, 15, 22, 23, 24, T.18N., R.5W., W.M.; and Sections 5, 6, 7, 8, 17, 18, 19, 20, T.18N., R.4W., W.M.; hereinafter called the Grays Harbor Area.

National Forest lands exchanged out of Federal ownership within the Grays Harbor Federal Sustained Yield Unit (GHFSYU) will be exempt from the requirements of the Unit.

Any purchaser of National Forest timber from the Unit who is unable to find a market or receive a fair price within the Grays Harbor Area for any raw forest products requiring primary manufacture removed from National Forest lands may, upon establishing this fact to the satisfaction of the Regional Forester, receive special authorization to market such products elsewhere.

III. DEFINITION OF PRIMARY MANUFACTURE

The term "primary manufacture" as used herein shall be considered to have been accomplished when, as a minimum:

A. In sawmills, logs have been cut into rough green lumber containing the various dimensions of lumber usually produced by mills of comparable size in the sawmill industry of western Washington.

B. In veneer or plywood plants, logs, bolts, or veneer blocks have been converted to rough green veneer.

¹ Amended in 1987.

C. In wood chipping plants, roundwood products, logging residues or plant by-products have been made into chips of any merchantable grade.²

D. In shingle mills, logs or bolts have been manufactured into shingles or shakes of any marketable grade.

E. In other raw forest products processing plants, the forest material has been manufactured to a point comparable in degree of refinement to those stipulated above.

Special products, such as poles, piling, or spars will be excluded from the primary manufacturing stipulations.

Logging residues are defined as: "The unused portions of growing stock or sawtimber trees cut or killed by harvesting timber, land clearing, or cultural operations."

Plant by-products are defined as: "Wood residues from primary manufacturing that are used for products. Includes slabs, edgings, trimmings, miscuts, sawdust, shavings, veneer cores and clippings, and screenings at pulp mills."

IV. SALE OF TIMBER

Beginning with fiscal year 1987, fifty percent (50%) of the volume of the annual programmed harvest from the Quinault Ranger District may be offered for sale without competitive restrictions on the location of manufacture of said timber. The Regional Forester may establish annual amounts of exempted volume at levels lower than 50% as he finds appropriate to the accomplishment of Unit objectives. This authority may be redelegated to the Forest Supervisor, Olympic National Forest.

To minimize administrative/operational constraints, the *annual* exempted volume may vary between 45 and 55 percent in any given year. After the first, year, *cumulative annual total* of exempt volume sold should not exceed 50%.³

Timber will be sold from the National Forest lands in the Unit under the applicable regulations of the Secretary of Agriculture. Sales involving stumpage values in excess of \$500.00 and which are not exempt from Unit manufacturing requirements will be advertised for competitive bidding.

It will be the objective of the Forest Service to design the sale program for the Unit so that active competition for the purchase of the timber will be possible and so that efficient logging operations of varying sizes can be accommodated.

National Forest timber will continue to be available in sufficient amounts to satisfy the needs of bona fide settlers, miners, residents, farmers, and prospectors for personal and domestic use, in accordance with existing laws, regulations and Forest Service policies.

V. RATE OF CUTTING

The allowable cut of National Forest timber in the Unit will be as stated in the proposed Timber Management Plan⁴ or as deter-

² Roundwood products are defined as: "Logs, bolts, or other round sections cut from trees."

³ Amended in 1987.

⁴ Amended in 1987.

mined by the allowable safe quantity in the Land and Resource Management Plan for the Olympic National Forest when such Plan is adopted.

The proposed Land and Resource Management Plan, including the allowable sale quantity, may be revised at any time with the approval of the Regional Forester, Forest Service. The annual programmed sell may be revised based on annual budgets and local resource decisions.⁴

VI. LOCAL REMANUFACTURE

The economic stability of the communities within the Grays Harbor areas will be furthered by the greatest practicable reduction and utilization of waste in the woods and at manufacturing plants, as well as by local refinement and remanufacture of the products of primary processing. To this end, the primary processors of National Forest timber purchased from the Unit will be expected to remanufacture their products locally to the greatest practical degree, or to offer them at competitive prices, to remanufacturers within the Grays Harbor area for further processing.

VII. ACCOMPLISHMENT OF OBJECTIVES

⁴ Beginning on September 30, 1987, at not more than 10-year intervals thereafter, the Regional Forester will analyze the results obtained through the application of these policies in the management of the National Forest timber resource to determine whether or not the objectives of the Unit are being attained and whether circumstances warrant continuance of the Unit.⁴

If, as a result of any such study, it is determined that the objectives of the Unit are being satisfactorily accomplished and that the objectives would not be met if the declaration establishing the Unit were revoked, the program outlined in this policy statement will be continued without interruption or change.

If on the contrary, studies reveal that full and suitable utilization of the timber is not being accomplished; or, if for any other reason, it is found that the objectives of the Unit are not being substantially achieved, an advisory public hearing will be held to consider proposals calculated to correct the unsatisfactory conditions and to adjust the program outlined herein. If such hearing fails to develop practical ways and means of attaining the objectives contemplated by the Act of March 29, 1944 (58 Stat. 132; 16 U.S.C. 583-483i), the declaration establishing the Unit may be revoked.

Originally submitted September 8, 1949.

/s/ H. J. ANDREWS,
Regional Forester.

Originally approved November 2, 1949.

/s/ LYLE F. WATTS,
Chief Forest Service.

Approval of amendments made in 1952:

Submitted August 15, 1952.

/s/ WALTER H. LUND,
Acting Regional Forester.

Approved August 29, 1952.

/s/ EDWARD C. CRAFTS.

Approval of policy statement as amended in 1968:
Submitted March 4, 1968.

/s/ CHAS. A. CONNAUGHTON.

Approved March 15, 1968.

/s/ EDWARD P. CLIFF.

Approval of policy statement as amended in 1981:
Submitted 1981.

R.E. WORTHINGTON,
Regional Forester.

Approved March 2, 1981.

R. MAX PETERSON,
Chief.

Approval of policy statement as amended in 1987:
Submitted April 21, 1987.

for Regional Forester.

Approved June 2, 1987.

(for Chief.)

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